

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL BRANNAN, individually, as  
Administrator of the estate of BARBARA  
BRANNAN, deceased, and as Parent and  
Natural Guardian for his minor children S.B.  
and R.B.,

Plaintiffs,

v.

NORTHWEST PERMANENTE, P.C.;  
KAISER FOUNDATION HEALTH PLAN OF  
THE NORTHWEST; MINDY ROTHBARD,  
M.D.; and MIKE G. LIN, M.D.,

Defendants.

Case No. C05-5157FDB

ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION TO EXCLUDE EXPERT  
CAUSATION TESTIMONY

Defendants move to exclude Plaintiffs' causation testimony on the grounds that it is speculative and unsupported by reliable science. The background facts of this case and the authorities regarding the admissibility of expert opinion testimony have been set forth in earlier orders and will be omitted here. The arguments regarding Defendants' motion to exclude Plaintiffs' experts regarding causation will be discussed below.

**Dr. Nicholas DePace, Cardiologist and Internist**

Defendants contend that Dr. DePace will testify on cross-examination that his opinions have

1 been excluded before because they were not based on reliable scientific theory, which Defendants  
2 argue is true in this case. Additionally, Defendants first state that Dr. DePace opines that “the  
3 underlying mild cardiomyopathy with ventricular dilation and amphetamine was a significant  
4 contributing fact towards her demise.” Defendants argue that Dr. Depace then explains that  
5 amphetamines resemble a chemical called catecholamine and cites to the medical literature stating  
6 catecholamines are among a wide variety of drugs that “could cause various cardiovascular  
7 manifestations.”

8 Plaintiffs argue that a prior court’s decision is meaningless for this Court’s determination of  
9 the admissibility of Dr. DePace’s testimony in this case. Plaintiffs argue that the medical literature  
10 upon which Dr. DePace bases his testimony are appropriate textbooks.

11 Defendant’s motion appears to take issue with any opinion that a category of drugs “could”  
12 cause a certain effect, and to this extent Defendant’s motion is well taken for the reason that the  
13 expert must testify to reasonable degree of medical certainty Expert testimony may not be based on  
14 speculation or conjecture; an expert must testify to his or her conclusions to a “reasonable degree of  
15 medical certainty.” *McLaughlin v. Cooke*, 112 Wash.2d 829, 836, 774 P.2d 1171 (1989). Thus,  
16 Dr. DePace’s opinions must be made with a reasonable degree of medical certainty, or they will be  
17 excluded.

18 **Dr. Judy Melinek, Pathologist**

19 Defendants take issue with Dr. Melinek’s reported opinions that (1) “mixed amphetamine  
20 salts has been banned in Canada due to its association with sudden cardiac death, and is  
21 contraindicated in patients with structural cardiac abnormalities”; (2) “the autopsy findings of mild  
22 steatohepatitis (whose risk is increased in obesity), and the medical records documenting a history of  
23 renal failure, both suggest that routine monitoring of hepatic and renal function with simple blood  
24 and urine tests may have uncovered functional abnormalities which would affect the metabolism and  
25 excretion of drugs, such as amphetamines”; and (3) her concurrence with the Cowlitz County

1 Coroner's Office in attributing Ms. Brannan's death to amphetamine effect because her opinion does  
2 not clearly state that Adderall probably, or more likely than not, caused Barbara Brannan's death.

3 Plaintiffs respond that as an assistant medical examiner in San Francisco, Dr. Melinek  
4 routinely interprets toxicology reports and has determined the cause of death in thousands of cases.  
5 Plaintiffs point out that Dr. Melinek states that "the levels of amphetamines found in Mrs. Brannan's  
6 blood at the time of death are consistent with chronic amphetamine administration, that the level of  
7 amphetamine was sufficient to, and did cause her death due to the effect of the stimulant on her  
8 already-damaged heart, and that she did state that amphetamines (Adderall) probably or more likely  
9 than not caused Mrs. Brannan's death.

10 Defendant's motion is not well taken, and Dr. Melinek may testify as to her opinion as to  
11 cause of death as long as she so concludes with a reasonable degree of medical certainty.

12 **Dr. Howard Miller, Family Practitioner**

13 Defendants object to Dr. Miller's testimony which reiterates the autopsy finding that Mrs.  
14 Brannan's death was caused by amphetamine effect, and which further describes "cumulative  
15 potential side-effects" from amphetamines and Mrs. Brannan's other prescribed medications  
16 including narcotics. Defendants assert that Dr. Miller does not cite to any medical literature  
17 documenting the side-effects and linking the side-effects to Adderall as a cause of death.

18 Plaintiffs assert that there is no linking of "side-effects to Adderall" in Dr. Miller's report.  
19 Moreover, Plaintiff state that Dr. Miller's report is concerned only with rebutting Defendants'  
20 general practice expert, Dr. Nedrow and with the standard of care of Washington state physicians.

21 Defendants motion regarding Dr. Miller is not well taken and will be denied, as Dr. Miller  
22 will be testifying on the standard of care of a general practice physician in Washington.

23 **Dr. Clifford Nelson, Pathologist**

24 Dr. Nelson is the medical examiner who performed the autopsy on Mrs. Brannan.  
25 Defendants move to exclude Dr. Nelson's testimony which reads as follows: "Cause of Death:


1 Cardiac Dysrhythmia Due to: Myocardial fibrosis and amphetamine effect Manner of Death:  
2 Undetermined.[sic.]” (Olson Decl. Ex. D.) Defendants argue for the exclusion on the basis that his  
3 Curriculum Vitae does not identify research regarding amphetamines and cardiac death.

4 Plaintiffs argue that this motion is frivolous, that Dr. Nelson’s testimony is based on his  
5 evaluation independent of the litigation, and his curriculum vitae indicates more than adequate  
6 professional experience in forensic pathology. Moreover, Dr. Nelson is aware that amphetamines  
7 cause dysrhythmia and that he frequently consults “Karch’s Pathology of Drug Abuse,” a general  
8 reference book coroners use.

9 Defendants’ motion is not well taken. Dr. Nelson is entitled to testify based on his  
10 professional experience in forensic pathology as to the cause of Mrs. Brannan’s death.

11 NOW, THEREFORE, IT IS ORDERED: Defendants’ Motion to Exclude Expert Causation  
12 Testimony [Dkt. # 82] is GRANTED in part and DENIED in part as set forth above.

13 DATED this 28<sup>th</sup> day of September, 2006.

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16 FRANKLIN D. BURGESS  
17 UNITED STATES DISTRICT JUDGE  
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